

REMARKS

By this Office Action, the Examiner has required restriction to one of the following inventions under 35 U.S.C. §121:

- I. Claims 1-10, drawn to a process of treating or preventing bacterial infections by administering at least two bacteriophage derived lytic enzymes.
- II. Claims 11-14, drawn to a process of treating or preventing bacterial infections by administering a bacteriophage derived lytic enzymes.
- III. Claims 15-17 and 19-23, drawn to compositions comprising at least two bacteriophage derived lytic enzymes.
- IV. Claim 18, drawn to a method of screening for agents capable of enhancing the activity of Pa1 and Cp1-1.
- V. Claim 24, drawn to a method of decontaminating surfaces with compositions comprising at least two bacteriophage derived lytic enzymes.
- VI. Claims 25-29, drawn to a method of making a composition containing at least two lytic enzymes derived from bacteriophages.

Responsive to the Requirement for Restriction, Applicants elect to prosecute the invention of Group III, with traverse, claims 15-17 and 19-23, drawn to compositions comprising at least two bacteriophage derived lytic enzymes.

Applicants respectfully request reconsideration of the Requirement for Restriction, or in the alternative, modification of the Restriction Requirement to allow prosecution of more than one group of Claims designated by the Examiner in the present Application, for the reasons provided as follows.

Under 35 U.S.C. §121 "two or more independent and distinct inventions ... in one Application may ... be restricted to one of the inventions." Inventions are "'independent'" if "there is no disclosed relationship between the two or more subjects disclosed" (MPEP 802.01). The term "'distinct'" means that "two or more subjects as disclosed are related ... but are capable of separate manufacture, use or sale as claimed, AND ARE PATENTABLE OVER EACH

OTHER" (MPEP 802.01) (emphasis in original). However, even with patentably distinct inventions, restriction is not required unless one of the following reasons appear (MPEP 808.02):

1. Separate classification
2. Separate status in the art; or
3. Different field of search.

Further, under Patent Office Examining Procedures, "[i]f the Search and Examination of an entire Application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions" (MPEP 803, Rev. 8, May 1988) (emphasis added).

Applicants respectfully submit that the groups designated by the Examiner fail to define compositions and methods, with properties so distinct as to warrant separate Examination and Search. Claims 1-10 of Group I are drawn to a process of treating or preventing bacterial infections by administering at least two bacteriophage derived lytic enzymes that are fundamentally related to claims 15-17 and 19-23 of Group III, drawn to compositions comprising at least two bacteriophage derived lytic enzymes. The search for any of the methods separately classified by the Examiner as the invention of Group I would require an additional search of the **identical** classes wherein the compositions of Group III of use in the methods of Group I are classified, thus resulting in a duplicate search for the same material. Thus, Applicants submit that the Search and Examination of the entire Application, or, at least, of Group I with Group III can be made without serious burden, and therefore request that the Examiner examine the claims of both of Groups I and III of the Application on the merits.

The Examiner's assertions to the contrary notwithstanding, Applicants respectfully submit that conjoint examination and inclusion of the claims of both groups III and I of the present Application would not present an undue burden on the Examiner, and accordingly, withdrawal of the Requirement for Restriction, or, at the least, modification to include the claims drawn to Group III and Group I is in order and respectfully requested.

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No fees are believed to be necessitated by the foregoing Response. However, should this be erroneous, authorization is hereby given to charge Deposit Account No. 11-1153 for any underpayment, or credit any overages.

In view of the above, withdrawal of the Requirement for the Restriction is requested, and an early action on the merits of the Claims is courteously solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Christine E. Dietzel", written over a horizontal line.

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